RECENT DECISIONS

ACCORD AND SATISFACTION—PART PAYMENT CONDITIONED ON ACCEPTANCE AS PAYMENT IN FULL.—The plaintiff sold and delivered to the defendant a quantity of goods, a portion of which the defendant attempted to return. The plaintiff refused to accept the goods so returned, and while the matter was in dispute the defendant sent the plaintiff a check for the exact value of the goods retained but conditioned that it should be cashed only in full acceptance of all claims. The plaintiff disregarded the condition, cashed the check, and then notified the defendant of a balance due. *Held,* the condition is void. *Whittaker Chain Tread Co.* v. *Standard Auto Supply Co* (Mass.), 103 N. E. 695.

It seems a generally accepted rule that where there is an unliquidated claim against the debtor an agreement to accept a smaller sum in full discharge will constitute a satisfaction for the whole claim. *Chicago, Milwaukee, etc., Ry. Co.* v. *Clark,* 178 U. S. 353; *Connecticut Lumber Co.* v. *Brown,* 68 Vt. 239, 35 Atl. 56. A majority of the courts seem to have held, contrary to the decision in the principal case, that this rule obtains even where the sum so paid was conceded by the debtor to have been due. *Tanner* v. *Merrill,* 108 Mich. 58, 65 N. W. 664; *Hull* v. *Johnson,* 22 R. I. 66, 46 Atl. 182. The court in the principal case based its decision on the lack of an express agreement by the creditor to accept the condition in the check; yet it seems settled that where a debtor tenders a check for a sum which he admits to be due, in full satisfaction of an unliquidated or disputed claim and the creditor cashes the check no secret protest will avoid the condition. *Hull* v. *Johnson, supra; Neely* v. *Thompson,* 68 Kan. 193, 75 Pac. 117. The consideration to support the payment of a sum admitted to be due in satisfaction for the whole claim is found in the prompt payment and a *bona fide* attempt to avoid threatened litigation. *Treat* v. *Price,* 47 Neb. 875, 66 N. W. 834. But see *contra, Demeules* v. *Tea Co.,* 103 Minn. 150, 114 N. W. 733, 14 L. R. A. (N. S.) 954.

BANKS AND BANKING—RIGHT OF HOLDER OF A CHECK TO MAINTAIN AN ACTION AGAINST THE BANK UPON WHICH IT IS DRAWN.—A bank agreed, through its president, to pay checks given by a customer in payment for live stock, if the customer would resell and deposit the proceeds in time to meet the outstanding checks. The bank, contrary to the agreement, applied the deposits upon a previous indebtedness of the depositor. *Held,* the holder of the checks has a right of action against the bank, although he did not know of the agreement. *Ballard* v. *Bank* (Kan.), 136 Pac. 935.

The bank had no lien on the deposits to satisfy the previous debt, as it would have had under a general deposit. *Smith* v. *Bank,* 147 Ia. 640, 126 N. W. 779, 30 L. R. A. (N. S.) 517. In the the normal case, a holder of a check has no right of action against the bank upon which it is drawn. This holding is based in some jurisdictions on the ground

of lack of privity between the parties. *Bank of the Republic* v. *Millard,* 10 Wall. (U. S.) 152. In others, because of the anomaly of two rights of action, for the same cause, in two parties having opposite interests. *Creveling* v. *Bank,* 46 N. J. L. 255, 50 Am. Rep. 417; *Cincinnati, etc., Railroad Co.* v. *Bank,* 54 Ohio St. 60, 42 N. E. 700, 56 Am. St. Rep. 700. In some jurisdictions a check is considered an assignment of the drawer's fund *pro tanto,* and hence the holder is allowed to sue the bank. *First Nat. Bank of Duquoin* v. *Keith,* 183 Ill. 475, 56 N. E. 179. In others the right is upheld on the implied promise of the bank to pay all checks given by the drawer when there is a sufficient amount on deposit. *Fonner* v. *Smith,* 31 Neb. 107, 47 N. W. 632, 28 Am. St. Rep. 510; *Simmons, etc., Co.* v. *Bank,* 41 S. C. 177, 19 S. E. 502, 44 Am. St. Rep. 700. In the principal case, and in previous ones under substantially the same circumstances, the Kansas court allows an action by the holder on the contract made in his behalf. It seems that in the principal case the right of the holder of the check against the bank was purely equitable, arising out of the peculiar circumstances of the case. In the so-called "Code" states, where the practice and pleading at law and in equity is the same, the distinction between equitable and legal rights is often lost sight of. Peculiar circumstances may often give rise to equitable rights without violating the settled rules of the common law.

CARRIERS—CONSTITUTIONAL LAW—REGULATION BY COMMISSION—SALE OF MILEAGE BOOKS.—The defendant voluntarily put on sale mileage or penny scrip books at a rate less than the maximum rate fixed by the commission, which were good for passage only when exchanged for a ticket. The commission issued an order requiring all railroads selling mileage or penny scrip books to pull them on the trains of the company selling the same, when presented by the holders for transportation between points wholly within the state. *Held,* this is a valid regulation and is not an interference with the freedom of contract. *Railroad Commission of Ga.* v. *L. & N. Ry. Co.* (Ga.), 80 S. E. 327.

It is settled that there is no absolute liberty of contract, and limitations thereon by police regulations of the state are frequently necessary in the interest of public welfare and do not violate the freedom of contract guaranteed by the fourteenth amendment. *Frisbie* v. *U. S.,* 157 U. S. 160; *Schmidinger* v. *Chicago,* 226 U. S. 578. This is of course subject to the qualification that such regulation must not be so arbitrary or unreasonable as to amount to a denial of due process of law or a taking of private property for public use without just compensation. *Stone* v. *Trust Co.,* 116 U. S. 307; *Smyth* v. *Ames,* 169 U. S. 466. Therefore, common carriers from the public nature of the business carried on by them, and the interest which the public has in their operation, are subject as to their intrastate business to state regulation, which may be exerted either directly by the legislature or by administrative bodies endowed with power to that end. *Gladson* v. *Minn.,* 166 U. S. 427; *A. C. L. Ry. Co.* v. *N. C. Corp. Com.,* 206 U. S. 1. This power to regulate common carriers still exists even though such regulations may to some extent affect the power to contract. *L. & N. Ry.*